IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 806 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI VADANJI SHANKERJI
Versus
STATE OF GUJARAT

Appearance:
MR VIJAY H PATEL for Petitioner.
MR K.G.SHETH, ADDITIONAL PUBLIC PROSECUTOR for Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The appellant challenges the judgment and order dated 20th July, 1993 passed by the Learned Additional Sessions Judge, Palanpur in Sessions Case no. 25 of 1992 convicting the appellant-accused for the offence under Sec. 304 part II of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.2,000/- in default of payment of which to undergo simple imprisonment of 3 months.

2. The prosecution version was that on 22nd November, 1991, in the evening at about 7 o' clock , there was a quarrel between the accused Vadanji and deceased Manchchaji over the accused coming and selling liquor near the house of the complainant Hemchandji, father of the deceased who also used to reside in that house. The accused was the brother of the wife of Sahdevji who was the other son of the complainant. Sahdevji used to reside in a separate nearby house while Manchchaji was residing with his father. After some altercation, the accused, who according to the complainant, was a headstrong person, gave a stick blow to Manchchaji on his head as a result of which Manchchaji fell down. He was carried to the hospital at Palanpur in the tractor of Godad Deva and from Palanpur, the victim was referred to the Civil Hospital, Ahmedabad where he died during treatment on 24th November, 1991. The FIR exh. 32 was lodged by Hemchandji, father of the deceased at Palanpur. In the FIR, which was given on 23rd November, 1991, it was stated that the incident had taken place in the evening on 22nd November, 1991 when Manchchaji had asked the accused, who had come to the house of Sahdevji for selling liquor not to sell it at that place and this resulted in exchange of words between the two whereupon the accused, who was having a stick, gave a stick blow to Manchchaji on his head. It was stated that the complainant, his wife Cheharben and his nephew Agraji Panaji rushed to the spot. The elder son of the complainant (Sahdevji) and his wife took the accused inside their house and Manchchaji who was bleeding from his head was lifted and brought by the complainant to his house. Thereafter, they had taken him in a tractor of Godad Deva to the local hospital from where he was taken to the Civil Hospital, Palanpur. It was further stated in the FIR that Manchchaji was still unconscious and that he was to be taken to Ahmedabad and since the doctor had informed the police and the complainant was called to the police station, he was giving this complaint. After the death of Manchchaji, further information was recorded on 26th November, 1991 below the aforesaid complaint in which the complainant declared that his son Manchchaji had died. The defence

of the accused was of total denial and, it has been suggested on behalf of the defence that the death was accidental as a result of Manchchaji falling on the road from a bullock cart.

3. The trial court, relying upon the evidence of the eye witnesses and other evidence including the medical evidence, ruled out any possibility of the death having been caused by a fall and held that it was caused due to the stick blow given by the accused on 22nd November, 1991 in the evening when Manchchaji quarreled with him over selling liquor near their house. The learned trial Judge held that the facts and circumstances which were established in the case showed that the act was done by the accused with the knowledge that it was likely to cause death or to cause such bodily injury as was likely to cause death but without any intention to cause death and therefore it fell within the ambit of Part II of Sec. 304 of the Indian Penal Code.

4. The deposition of the Circle Inspector Jayantilal at exh. 13 and the map exh. 14 indicate that the incident had taken place near the houses of the complainant and Sahdevji. According to the complainant Hemchandji, Manchchaji was one of his seven sons of whom Sahdevji was the eldest. Sahdevji had separated from him while all his other sons were residing with him and they were jointly cultivating lands. In his deposition exh. 15, he has stated that at about 7 o' clock in the evening on the day of the incident, the accused Vadanji, brother-in-law of his eldest son Sahdevji, had come to sell liquor. Vadanji used to bring liquor from his village to sell it in this village i.e. at Dalwada. He used to sit near the house of the complainant for selling it. Manchchaji told the accused Vadanji at that time that he should not sit at that place to sell liquor. This resulted in exchange of abuses between the two. The accused, therefore, gave a stick blow to Manchchaji on his head. Manchchaji thereupon fell down. At that time, the complainant, his wife Cheharben, Manchchaji's wife Kidiben and the complainant's nephew Agraji, who were in front of their house in the "angna" rushed to the spot where Manchchaji was lying down bleeding from his head, lifted him and brought him to his house. The complainant has stated that Sahdevji and his wife who had come to the spot had taken Vadanji to their house but Vadanji i.e. the accused, being a headstrong person, ran away towards village Salla. The complainant took Manchchaji in the tractor of Godad Deva to Madana. He was accompanied by his wife, Manchchaji's wife and others. He has stated that Dr.Kanubhai referred Manchchaji to Palanpur Civil

Hospital. They went to the Civil Hospital , Palanpur in the tractor and the doctor told him there to file the complaint. At Palanpur, some treatment was given to Manchchaji, but on the next day, they were advised to take him to the Civil Hospital, Ahmedabad. Therefore, Manchchaji was carried in an ambulance to Ahmedabad and admitted in the Civil Hospital where he died on the next day. He has stated that he had seen the incident from a distance of about ten feet and that the incident had taken place in the open space. Barring some minor contradictions which are not significant, nothing is brought out in his cross-examination which would create any doubt over his testimony on the material particulars which clearly establish that the incident did take place in the evening on 22nd November, 1991 near the house of this witness and that after the quarrel started between his son Manchchaji and the accused, the accused gave a stick blow on the head of Manchchaji, as a result of which Manchchaji fell down and later expired on 24th November, 1991 in the Civil Hospital at Ahmedabad. His deposition also shows that his wife Cheharben and Manchchaji's wife Kidiben were present near the scene of the offence. His nephew Agraji was also there.

4.1. Cheharben, mother of the deceased in her deposition at exh. 21 has also narrated the same incident by stating that Manchchaji had, at the time of the incident, questioned the accused over his coming to sell liquor near their house. She has stated that the house of her elder son Sahdevji was about 25 feet away from her house. She has stated that when there was exchange of words between Manchchaji and the accused, the accused gave a stick blow on the head of Manchchaji. Her husband and Kidiben , wife of Manchchaji were also in the "Osri" of their house and when the accused gave a stick blow to Manchchaji, they all ran to the spot. Agraji also reached there. Manchchaji had fallen down and was bleeding from his head. She has also stated that Manchchaji was thereafter taken in a tractor to the hospital and from Palanpur he was taken to Ahmedabad. In her cross-examination, she has stated that people were returning from their fields through the path which was near their house. She has, however, maintained that when the incident took place, these witnesses alone were present and others had come afterwards. It was tried to be contended by the learned counsel appearing for the appellant on the basis of this part of the deposition of Cheharben that independent witnesses who had gathered at the spot where the incident is said to have been taken place, have not been examined by the prosecution. He has stated that even Sahdevji who is said to have come and

taken away the accused has not been examined and therefore adverse inference should be drawn against the prosecution to the effect that the incident did not take place in the manner in which it is said to have taken place by the complainant and Cheharben. There is no substance in this contention because the incident had taken place in winter at about 7 o' clock when it would be dark and in a small village like Dalwada, where the farmers would return home before it is dark, one cannot expect a big rush on a lane between a few houses, in a small village. It is more likely that after hearing the commotion, people of the locality would have gathered. The presence of the complainant and his wife Cheharben and also of Manchchaji's wife Kidiben in the"Osri" of their house was quite natural. The exchange of foul words that took place between Manchchaji and the accused would have obviously attracted their attention in the quiet and wintery evening. The voices were familiar to them and not much light was required to identify as to who was quarrelling. They were all interrelated and these witnesses obviously knew the subject matter of the quarrel. Their conduct in watching the abusive exchanges with concern was quite natural, having regard to their close relationship with Manchchaji. We are fully satisfied that the complainant Hemchandji and his wife Cheharben have witnessed the incident in which the accused had given the stick blow to Manchchaji after there was a quarrel in which they had exchanged abuses and that the death resulted from the injury that was caused by the accused.

4.2. Kidiben, in her deposition exh. 22 has broadly narrated the same version. There is no reason to doubt the presence of Agraji who was nephew of the complainant. There is also no reason to doubt the version of Agraji who, in his deposition at exh. 23, has narrated the manner in which the quarrel took place and about the stick blow given by the accused on the head of Manchchaji.

4.3. Godad Deva in his deposition exh. 24 has supported the prosecution on the aspect that the complainant had come to him and told him that his son was beaten and that he was to be taken in his tractor to the hospital. This rules out any possibility of Manchchaji being injured by a fall from bullock cart. If Manchchaji had fallen down from a bullock cart and death had resulted due to such fall, there was no earthly reason for the complainant to say that he was assaulted by the accused. Much reliance was placed on the medical papers at exh. 42 and the deposition of Dr. D.R.Parmar who had

recorded the history on the case papers stating that there was history of "fall down from cart today". The case papers exh. 42 & 43 were got produced by this doctor in his cross-examination. It will, however, be noticed that on the last page of the case papers, there is a clear endorsement made by Dr.Parmar on 23rd November, 1991 which reads as under :

" Previously patient's relative has given wrong history. After inquiry, true history elicited from the relatives and Medicolegal action taken."

It has come on record that Dr.Parmar had sent a yadi to the police, a copy of which is at exh. 41. Even the complainant has stated that the doctor had informed the police and therefore he was called at the police station where he had given the complaint exh. 32 on 23rd November, 1991. It has not come in evidence as to who had given the history to the doctor who endorsed in the initial portion of the case papers the words "Fall down from cart". The medical evidence clearly negatives the theory of injury by fall. Dr. K.A.Shah in his deposition exh. 48 has proved the medical certificate and post-mortem notes at exhs. 49 & 50 and has stated that the death was caused due to the injury on the head of Manchchaji. He had stated that the said injury was sufficient in the ordinary course of nature to cause death of Manchchaji and that the injury was possible by a hard and blunt substance like the muddammal stick. In the cross-examination, despite repeated pegging by the learned Counsel appearing for the accused, the medical expert has maintained that the type of injury which was found on the head of Manchchaji would not occur due to a fall from the cart or from a height. He has given valid reason for not agreeing with the defence suggestion that the injury was possible by a fall. He has stated that looking to the fact that the injury was extending near the ear of the deceased and the type of injury caused, he was of the view that such an injury cannot be caused by a fall and was possible when a person is hit with a hard and blunt substance like the muddammal stick. The medical evidence, in our opinion, clearly corroborates the version of the eye witnesses that the accused had caused the injury by giving a stick blow on the head of Manchchaji.

5. In the above view of the matter, we find ourselves in complete agreement with the reasoning and findings of the trial court for convicting the accused for the offence under Sec. 304-II of the Indian Penal Code by holding that the act was committed by the accused without premeditation, in a sudden fight in the heat of passion and upon a sudden quarrel within the meaning of

exception 4 of section 300 of the Indian penal Code and that the offender had not taken undue advantage or acted in a cruel or unusual manner. It is clear from the evidence on record that the act was done by the accused with the knowledge that it was likely to cause death but without any intention to cause death and therefore the offence committed was of culpable homicide not amounting to murder punishable under Part II of Section 304 of the Indian Penal code. The trial court has imposed the sentence of ten years rigorous imprisonment on the accused and ordered him to pay a fine of Rs.2,000/- and in default of payment of such fine to undergo simple imprisonment for three months. Having regard to the facts and circumstances of the case, we are of the view that the sentence of rigorous imprisonment of ten years requires to be reduced to seven years rigorous imprisonment in this case and we accordingly modify the order of sentence by reducing the period of rigorous imprisonment from ten years to seven years rigorous imprisonment. We do not propose to interfere with the sentence of fine. Subject to this modification in the sentence, the appeal is dismissed.

(R.K.ABICHANDANI, J)

(SHARAD D DAVE, J)

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